



No. 233597  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between:

Daniel Yoshio Nagase

Plaintiff

and:

Grant C. Taylor QC/Master and Supreme Court of British Columbia

Defendants

**NOTICE OF APPLICATION**

**Name of applicant:**

The Attorney General of the Province of British Columbia (the "Attorney General")

To: Daniel Yoshio Nagase

TAKE NOTICE that the Attorney General will make an application to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, BC, on July 7, 2023 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. The Court strike the Amended Notice of Civil Claim, without leave to further amend, and dismiss the action against all defendants pursuant to Rule 9-1(5) of the *Supreme Court Civil Rules*.
2. The Court award costs to the Attorney General.
3. Until it pronounces judgment on this application, the Court stay the action with respect to all steps unrelated to this application including the filing of statements of defence to this action.
4. If it dismisses this application, the Court permit the defendants to file their statements of defence 21 days after the Court pronounces its judgment.

## Part 2: FACTUAL BASIS

1. Although not a named party, the Attorney General brings this application pursuant to her constitutional and statutory responsibility to superintend all matters connected with the administration of justice in British Columbia. The Attorney General has and may intervene in matters that threaten the integrity of the justice system or otherwise interfere with the administration of justice.

***Attorney General Act***, RSBC 199, c. 22, s. 2(c) & (d)  
***Noddle v. Canada (Attorney General)***, 2016 BCSC 607 at paras. 2-4  
***Parhar v. British Columbia (Attorney General)***,  
2021 BCSC 700 at para. 12

2. In the Attorney General's view, this claim is an attempt to undermine the authority of the Supreme Court and its process.
3. On May 12, 2023, the plaintiff filed, but did not serve, the Notice of Civil Claim.
4. On June 7, 2023, the plaintiff filed an Amended Notice of Civil Claim and an uncommissioned affidavit.
5. According to these documents, the plaintiff says that on November 10, 2022, Master Taylor made an order in the plaintiff's family law matter. The plaintiff interprets the order as having "restrained me from taking any action to preserve and protect the current and future integrity" of his children.
6. The plaintiff says that Master Taylor made an order based on hearsay prohibiting all contact with his children between November 10, 2021 and November 9, 2022.
7. The plaintiff does not appear to have appealed Master Taylor's order.

8. The plaintiff says that his son and presumably his daughter received COVID vaccinations during the period when the order applied. He says he learned of the vaccination in March 2023.
9. The plaintiff alleges that Master Taylor and the Supreme Court are responsible for injuries he suggests his children will suffer at some point in the future. He seeks \$66 million in damages on his children's behalf.

### **Part 3: LEGAL BASIS**

#### ***Rule 9-5(1)***

1. Pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*, at any stage of the proceeding, the court may order to be struck out or amended the whole or any part of a pleading on the ground that
  - a. it discloses no reasonable claim or defence, as the case may be,
  - b. it is unnecessary, scandalous, frivolous or vexatious,
  - c. it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
  - d. it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

2. In ***Willow v. Chong***, 2013 BCSC 1083, Madam Justice Fisher (then of this Court) outlined the law with respect to applications brought pursuant to Rule 9-5(1):
  - a. Rule 9-5(1)(a) permits the court to strike a pleading on the basis that it discloses no reasonable claim if it is plain and obvious, assuming the facts pleaded are true, that the pleading discloses no reasonable cause of action, has no reasonable prospect of success, or if it is certain to fail. The court need not take allegations based on assumptions and speculation as true. Bare allegations of

wrongdoing that are supported only by assumptions and speculations are not material facts that support a claim.

(paras. 17 – 19)

- b. Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous, or vexatious.

(para. 20)

- c. Rule 9-5(1)(d) allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality, and the integrity of the administration of justice. A claim may be struck where it is an attempt to re-litigate an issue that has already been decided.

(para. 21)

- 3. Relying on the doctrine of judicial immunity found in the common law and as codified in statute, the court should strike the amended notice of civil claim under Rule 9-5(1) (a), (b) and (d).
- 4. Given the absolute nature of the immunity, no further amendment can save this action.

***Judicial immunity prohibits this action***

- 5. The plaintiff says that Master Taylor made the wrong decision based on hearsay evidence in granting an order of the court. The plaintiff says \$66 million in damages will arise from Master Taylor's order.
- 6. Section 11.3 of the *Supreme Court Rules* outlines the duties and powers of a master:

- (1) **Masters must devote themselves exclusively to judicial duties and must not engage, directly or indirectly, in any other occupation, profession or business.**
- (2) Subject to the limitations of section 96 of the *Constitution Act, 1867*, a master has the same jurisdiction under any enactment or the Rules of Court as a judge in chambers unless, in respect of any matter, the Chief Justice has given a direction that a master is not to exercise that jurisdiction.
- ...
- (5) **An action must not be brought against a master for damages for anything done or omitted in good faith by the master**
  - (a) **in the performance or intended performance of any duty, or**
  - (b) **in the exercise or intended exercise of any power.**
- (6) Subsection (5) does not absolve the government from vicarious liability for an act or omission for which the government would be vicariously liable if subsection (5) were not in force.

[Emphasis Added]

- 7. Section 11.3(5) is a complete answer to this claim. It – and the principle of judicial immunity on which it is framed – allows masters to make decisions without fear of reprisal and thereby assert their constitutionally protected independence.

***Walter v. British Columbia (Attorney General)***,  
2018 BCSC 1304 at para. 56, 133,  
aff'd 2019 BCCA 221

- 8. Simply, disgruntled litigants must appeal decisions they do not like. They cannot sue masters (or other judicial decision-makers) for judicial acts and decisions. Actions like this have no prospect of success in the face of judicial immunity and are appropriately struck under Rule 9-5(1)(a)(b) and (d).

***Hokhold v. Attorney General***, 2021 BCCA 475  
at paras. 35 and 36

9. As Master Taylor's decision triggered his absolute immunity to this action, further amendments would serve no purpose.

***The claim against the Supreme Court has no legal basis***

10. The Supreme Court of British Columbia is not an entity that can be sued. Even if one could maintain an action against the Supreme Court, the court – at large - must enjoy the same or greater protections afforded to its individual decision-makers.
11. To the extent the Court's inclusion in this matter represents the plaintiff's search for vicarious liability, the appropriate party, if any, would be the Province (*Supreme Court Act*, s. 11.3(6)).
12. However, even if the plaintiff named the Province to this action, s. 3(2)(a) of the *Crown Proceeding Act* immunizes the Province against the acts or omissions of masters and justices of the Supreme Court. Similarly, the Attorney General cannot be vicariously liable for judicial officers.

***Gadsby v. British Columbia***, 2019 BCSC 2503 at para. 19  
***Hokhold*** at paras. 17, 44 - 49

***Conclusion***

13. There is no claim here. Judicial immunity - at common law and in the statutory forms discussed above - leaves no room for this claim to succeed.
14. The sheer breadth of the immunity doctrine means there are no further amendments the plaintiff can make to create a viable claim on these facts.
15. The court should dismiss this claim without leave to further amend and grant the Attorney General her costs.

**Part 4: MATERIAL TO BE RELIED ON**

1. The plaintiff's materials filed in this proceeding.

The applicant estimates that the application will take 2 hours.

- [ ] This matter is within the jurisdiction of a master.  
[X] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on the person,
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: June 23, 2023



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Signature of Michael J. Kleisinger  
Lawyer for the Applicant

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of  
this notice of application

☐ with the following variations and additional terms:

.....

.....

.....

Date: .....[dd/mmm/yyyy].....

Signature of ☐ Judge ☐ Master

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**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above